EXHIBIT 16

June 8, 2000

PREPARED STATEMENT OF THE HONORABLE FRED UPTON

BEFORE THE HOUSE COMMERCE COMMITTEE SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
COUNTERFEIT BULK DRUGS

Today we're here to dissect the issue of the influx of counterfeit bulk drugs. There is increasing concern that drug ingredients made overseas that are either counterfeit, unapproved, or poorly made are entering our nation's health care system and endangering patients' health and even lives.

Here's the case in point. Several years ago, 89 Haitian children died after taking cough medicine made with contaminated glycerin traced to China. We may think that tragic events like this can't happen here in our country, with its sophisticated regulatory system. But our Committee's investigation reveals that our system has major flaws-- and, it could happen here--all too easily.

Recently, our Committee's investigation revealed that FDA had linked the adverse reactions of 155 American patients to gen-ta-my-cin sulfate made by Long March Pharmaceutical, a Chinese drug company. It may well be that other patients died from unknown impurities in this drug. FDA's own forensic tests showed unexplained discrepancies between the chemical fingerprints of the drug taken from Long March at different times. FDA's inspection revealed data integrity problems and other serious deficiencies with Long March. Despite FDA inspections and quality control by the U.S. drug companies that used this material, this suspicious bulk drug still infiltrated our healthcare system without detection. This is just one example of other instances that have confirmed that counterfeit, substandard drug imports are getting into our prescription drug supply and harming patients.

To substantiate our concerns about counterfeit bulk drugs infiltrating our nation's health care system, I now ask unanimous consent to place FDA correspondence, internal FDA documents, and articles on drug counterfeiting into the record documenting the counterfeit bulk drug problem. Some of the FDA internal documents reveal that over the last few years key FDA officials believe counterfeit imported bulk drugs to be associated with deaths and other serious adverse events in American patients. This is the first time many of these documents have come to light.

The international community is also increasingly concerned. Just last month, the World Health Organization, international pharmacists, and international drug manufacturers publicized their concerns about counterfeit drugs. Some have estimated that 50-70% of the drugs in some developing countries are counterfeit. It would be wrong to assume that the United States is immune to the documented counterfeiting in the international pharmaceutical trade. The World Health Organization and some industry analysts

estimate about 5-8% of drug products shipped to the U.S. are counterfeit, unapproved or substandard.

Counterfeit bulk drugs are ingredients in human prescription drugs which are deliberately and fraudulently mislabeled or misbranded with respect to its identity or source. Without knowledge of the source, there is no product history. Without product history, the safety and efficacy of the product cannot be assured because there is no information about impurities, the age, the storage, the manufacturing environment, or the synthesis of the product. It is extremely difficult to detect counterfeit bulk drugs because there is no single chemical test for all impurities that may be in the product.

Counterfeit bulk drugs can represent a serious threat to the public health. A bulk quantity as little as 50 kilograms can be used in the production of millions of tablets or capsules. Therefore, only one counterfeit bulk that contains an impurity or is synthesized improperly could cause immediate death or injury to numerous people. The result of a counterfeit could be that the medication will not be effective or could produce a long term disease or injury. For example, these pictures show the differences at a microscopic level between the authentic drug and the counterfeit drug. The difference in this case lies in the particle size. Such a difference in the particle size could mean that the drug does not get absorbed in the bloodstream and therefore doesn't work.

There is still much we do not know about this public health threat. The FDA has not made any public health assessment of this issue. Even if FDA attempted such an assessment, the FDA has no ability to make an assessment with its current data. In its March 5, 1999, letter from Congressman Klink and me, the FDA stated that it does not collect data to assess the amount of unacceptable or adulterated active pharmaceutical ingredients shipped to the U.S. from foreign sources. With what information the FDA does have, the FDA has linked counterfeit or unapproved bulk drugs to deaths and other adverse events in the U.S. Last year when FDA's Forensic Chemistry Center conducted a focused, in-depth study of just a handful of Chinese drug imports, evidence was uncovered which led in part to targeted inspections resulting in an import alert for one plant and warning letters for two other plants.

We know we are only seeing the tip of the iceberg.

Lured by high prices and potential profits in the U.S., counterfeit bulks can get into our prescription drugs in several ways: (1) as imported ingredients to U.S. manufacturers; (2) as imported ingredients to pharmaceutical compounders; and (3) as source ingredients for internet pharmacies marketing to the U.S. The counterfeiters use sophisticated methods such as preparing false labeling, containers, seals and certificates of analysis, or using a manufacturing process that differs from the filed manufacturing process.

Here are two examples. The first example involves three pictures. The first picture shows a document dated around 1989 from an industry consultant laying out a scheme to market unapproved Chinese tri-meth- o-prim under the approved label of a German company. The second picture shows that the signature from the first document appears to belong to

Dr. Jose Gomes. The third picture shows that Dr. Gomes in 1999 was the consultant for Long March Pharmaceutical, the firm that made the gen-ta-mi-cin sulfate I talked about earlier. The second example is a diagram of how a drum of bulk drug shipped to Australia was counterfeited. A layer of authentic drug on the top, milled sugar in the next layer, followed by a layer of authentic drug, etc.

The public policy implications are enormous. The public health is threatened by unapproved, substandard or counterfeit bulk drugs. Counterfeits could have direct impact on the integrity of the adverse drug event report system. Counterfeit bulk drugs not only hurt patients, but defraud Medicare and Medicaid programs that pay for these drugs as if they are authentic. There is also speculation that an unknown influx of counterfeit, unapproved drugs is leading to more drug and chemical allergies and more antibiotic resistance.

Even after years of plans and recommendations from internal working groups, the FDA remains largely unable to detect or control imported counterfeit bulk drugs from entering the U.S. The FDA has not even worked with the Customs Service to investigate imported counterfeit bulk drugs since 1996 and does not have any ongoing criminal enforcement action -- or even a known strategy -- to deter or prevent crimes connected to counterfeiting bulk drug imports. Instead, FDA relies on its regulatory system of inspections, import policies, and postmarketing surveillance.

However, the FDA's testimony on this system is devastating. To illustrate this point, here are some direct quotes from FDA documents.

"The Agency is hindered by not having a complete list of foreign facilities manufacturing drugs products for the U.S."

This is not acceptable.

"(W)e still do not have systems that can effectively and efficiently communicate across the Agency, or readily provide field staff with critical information they need."

This is not acceptable.

"The Drug Listing database also does not interface with OASIS, which would assist import officers by automatically comparing manufacturers and listed pharmaceutical products to products offered for importation . . ."

This is not acceptable.

"FDA has identified the need to establish enhanced procedures to better assure that an import alert notice for a product or company, will, in fact, prevent the violative products from reaching the U.S. consumer."

This is not acceptable.

"The drug listing does not ensure authentic sources or authentic material as described in New Drug Applications (NDAs) is in fact being offered for admission."

This is not acceptable.

In addition, the FDA told us they only have information on 18% of the foreign drug manufacturers that ship to the U.S. The FDA has no information on 623 importing drug firms from China and 409 importing drug firms from India. These kinds of weaknesses, and others, cause me to conclude that the FDA cannot assure the American people that prescription drugs are free from counterfeits and poorly made, unknown ingredients. The FDA has told the Committee that its safety net is being stretched by the increasingly global nature of pharmaceutical commerce. At some point the FDA's safety net will break, and I fear it may already be broken. It is urgent that the FDA shift to a new model to deal with counterfeit bulk drug imports.

I am ready to do more than just hold FDA accountable. I am committed to working for a solution to this serious and dangerous problem. I fully intend to work with Commissioner Henney and the FDA to develop and implement new, effective protections. But the FDA needs to be forthright today about the threat and what it will really take to deal with the problem. I look forward to the testimony, further discussion, and action.